STANDING COMMITTEE REPORT NO. 14-51

RE: C.B. NO. 14-57/W&M

SUBJECT: SECURED TRANSACTIONS

SEPTEMBER 22, 2005

The Honorable Peter M. Christian
Speaker, Fourteenth Congress
Federated States of Micronesia
Second Regular Session, 2005

Dear Mr. Speaker:

Your Committee on Ways and Means to which was referred C.B. No. 14-57 entitled:

> "A BILL FOR AN ACT TO FURTHER AMEND TITLE 33 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY REPEALING SECTIONS 921 THROUGH 933 IN THEIR ENTIRETY, BY RENAMING CHAPTER 9 'REAL PROPERTY SECURITY INVESTMENTS,' BY ENACTING A NEW CHAPTER 10 NAMED 'THE SECURED TRANSACTIONS ACT,' BY ENACTING NEW SECTIONS 1001 THROUGH 1072 SETTING FORTH A LAW OF SECURED TRANSACTIONS; TO FURTHER AMEND TITLE 53, AS AMENDED, BY AMENDING SECTION 607 TO MAKE SOCIAL SECURITY LIENS SUBJECT TO THE SECURED TRANSACTIONS ACT; TO FURTHER AMEND TITLE 54, AS AMENDED, BY AMENDING SECTIONS 135, 152, 224, AND 226 TO MAKE TAX LIENS SUBJECT TO THE SECURED TRANSACTIONS ACT; AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the bill are expressed in its title. C.B. No. 14-57 was transmitted by the President via Presidential Communication No. 14-18. The purpose of the bill is to establish a secured transactions law for the FSM. The bill was written with technical assistance funded by the ADB Private Sector Development Project. In a number of respects, the bill is patterned after Article 9 of the Uniform Commercial Code (U.S.) and the Canadian Personal Property Security Acts which are generally regarded as the leading international models for secured transactions legislation. However, modifications have been made in recognition of circumstances specific to the FSM, including the primacy of state and traditional law relating to interests in land. Your committee understands that the bill was subjected to extensive review by the Department of Justice, the Legislative Counsel's Office, representatives of state governments and the private sector prior to transmittal.

Private sector development is critically important to the nation's economic future. Government spending cannot fuel the economic expansion that will be required to meet the needs of a growing population. In fact, it is likely that government expenditures will

actually shrink in the future.

FSM policy makers have long recognized the need to expand the private sector and to reduce the nation's economic reliance on public sector expenditures. The importance of private sector growth was a primary focus of both the Second and Third FSM Economic Summits. More recently, the Strategic Development Plan of the Federated States of Micronesia ("SDP"), approved by Congress through C.R. No. 14-16, establishes private sector development as a principal strategic goal of the nation. The SDP also recognizes that a significant impediment to such development is the lack of sufficient financing for the operations and expansion of domestic businesses. Your committee is of the opinion that the absence of a secured transactions law in the FSM is a principal reason that business financing is not readily available here. C.B. No. 14-57 has the purpose of enacting such a law.

Virtually every business periodically needs credit or an injection of cash. There may be a warehouse to be built or expanded. The business may need to buy equipment or inventory. Or economic conditions beyond the business' control may result in a loss of sales and a period of negative cash flow. Outside of the FSM, it is common for businesses, in such circumstances, to rely heavily on borrowed money. This is true of both the largest companies listed on the New York Stock Exchange and small, local retail operations. Both highly-profitable businesses and companies fighting to stay alive in bankruptcy use borrowed money as a significant component in their financial strategies. This is not true in the FSM.

Without question, it is very difficult to finance a business in the FSM, even though substantial funds are potentially available for business loans. According to data provided by the FSM Banking Board, deposits in FSM banks totaled more than $119 million at the end of 2004. But more than 85% of those funds are invested outside of the FSM. Of the small amount of deposit money that does remain in the FSM, less than half is loaned to FSM businesses. The FSM Development Bank provides a useful supplementary source of business capital, but does not have sufficient resources to finance a significant expansion of the private sector. The Banking Board, in its 2003 Annual Report, stated as follows:

> "A classic key to development is the accumulation of national savings (used in the broadest sense). The savings of a country and its citizens make available a pool of funds for lending and investment into domestic development opportunities. This is clearly no longer happening in the FSM with the bulk of deposits going to support economic development elsewhere."

In other words, at the same time that FSM businesses cannot obtain the financing that they need, deposits by FSM citizens in local banks are being invested, not here, but instead in other countries. Your committee believes that this exporting of FSM capital is seriously detrimental to private sector development in this country. The growth potential of domestic business will remain meager so long as the personal resources of business owners is the only significant source of business financing. Increased commercial lending will be necessary to support any meaningful expansion of the private sector.

Many people, both inside and outside the banking sector, believe that commercial lending in the FSM will not significantly increase until a legal environment is created in which the risks of business loans are reduced. The SDP in fact identifies it as a principal national policy "to reduce the risks of bank lending to domestic businesses". The European Bank for Reconstruction and Development ("the European Bank"), in recommending financial market policies for developing countries, has observed that "every commercial investor is interested in making a profit from his investment but in many cases the first fundamental concern is to obtain protection against loss of the investment." Your committee is of the opinion that loans will not become readily available to FSM businesses until laws are adopted that give commercial lenders a greater measure of protection against loss of the monies that they lend.

In many nations, lenders are able to protect their loans by taking a security interest in all or a portion of a borrower's assets. In other words, the lender, by agreement with the borrower, is given the right, upon a default by the borrower, to take possession of specified collateral and to apply the proceeds from selling that collateral to the payment of the debt. Secured financing of this sort is made possible by laws that recognize and provide enforcement mechanisms for

security interests, and establish registration systems enabling potential lenders to learn whether anyone else has a prior security interest or lien against the collateral. While secured transactions laws have been in place for many years in such developed economies as the United States, the UK and Canada, they are also becoming increasingly common in developing countries. In fact, the European Bank has found that "secured transactions play a vital role in financing in emerging and transitional market economies."

Although secured loans represent an important source of capital for businesses in other parts of the world, they are virtually unknown in the FSM. Representatives of the Bank of the FSM have told your committee that they will take only deposited cash and term deposit certificates as security for a loan and that this cash collateral must equal at least 105% of the loan amount. In other words, to obtain a $1,000 secured loan from the bank, a business must deposit at least $1,050. This type of lending is more likely to shrink the pool of business capital than to expand it.

It is not surprising that secured financing does not exist here. Current FSM law effectively rejects any claim that a secured lender's rights in collateral take priority over the claims of unsecured creditors. The existing title 33 to the FSM Code recognizes the enforceability of security interests as against the debtor himself, but provides the secured party with no protection against claims by other creditors including debts that the borrower may later incur. The law establishes no registry or other means by which a secured lender can record or register his security interest, thereby giving notice to other potential creditors and establishing priority with respect to the collateral. Seventeen years ago, FSM Supreme Court wrote:

> ". . . the Uniform Commercial Code has worked sweeping changes in United States law concerning security interests in the last 30 years,. There is general agreement that those changes have been improvements that expedited commerce. Yet, key features of the Uniform Commercial Code do not exist within the statutory law of the Federated States of Micronesia . . . ."

In re Island Hardware, 3 FSM Intrm. 332, 342 (Pon. 1988). The Court

has specifically held that "secret liens"---i.e., security interests that are not disclosed to other creditors---are unenforceable against such other creditors. Id. The Court has further stated:

> "Without a recording statute, any lien becomes by nature secret."

Bank of Hawaii v. Kolonia Consumer Co-Op Ass'n., 7 FSM Intrm. 659, 664 (Pon. 1996).

C.B. No. 14-57 is designed to modernize the FSM's secured transactions law and to create a legal environment in which secured financing will become readily available to FSM businesses. The scope of the bill is limited to security interests in personal property. Mortgages and other interests in land are left exclusively to state law. More specifically, C.B. No. 14-57 does the following:

- Establishes a specific set of rules under which a secured financing agreement can be established between a lender and a borrower
- Establishes a web-based registry in which a secured lender can electronically file notice of its security interest and from which other potential creditors can learn of any liens or security interests affecting a debtor's personal property.
- Establishes a set of priorities among creditors who have competing claims against the collateral.
- Creates mechanisms by which a secured creditor can efficiently enforce its rights in the collateral.

Your committee thinks it important to emphasize that C.B. No. 14-57 does not itself confer on any lender the right to a secured interest in a debtor's property. The bill merely enables a lender and a borrower to agree by contract to the creation of such an interest. Your committee further notes that the bill is designed primarily to facilitate commercial lending. The bill does establish rules relating to so-called "purchase money" secured lending to consumers. That is, a vendor selling to a consumer on credit can take a security interest in the item being sold, such as an automobile. Similarly, a bank financing a consumer purchase can take a security interest in the item purchased. However, unlike in the case of commercial loans, a lender

to a consumer is not permitted to take as collateral any property of the debtor beyond the specific item being financed. A comprehensive set of consumer lending laws is beyond the scope of the bill and, therefore, it was thought appropriate to limit the rights that a lender can obtain in a consumer's property.

Your committee held public hearings on C.B. No. 14-57 on August 11, 2005 in Yap, August 16, 2005 in Chuuk, August 19, 2005 in Kosrae, and September 19, 2005 in Pohnpei. Attendees at the hearings included governors, speakers, attorneys general and legislative counsel of three of the states, the FSM Banking Commissioner, and representatives of the Bank of the FSM and of the business community. The comments received from witnesses were generally favorable to the bill. Representatives of the banks were emphatic that secured transactions legislation is needed to encourage private sector investment in the FSM.

In a letter dated September 2, 2005, the leadership of Yap objected to C.B. No. 14-57 on the ground that, in its opinion, the bill exceeds the constitutional authority of the National Government. They urged instead that this matter be left to the states or, alternatively, that the scope of the National Government legislation be limited to secured transactions involving banks, or interstate or foreign commerce.

Your committee respectfully disagrees with the position taken by the leadership of Yap. We are of the opinion that the secured transactions bill falls squarely within the constitutional authority of Congress to regulate banking, foreign and interstate commerce, and bankruptcy. Const. Art. 9, Sec. 1. This exercise of Congress' power is entirely consistent with the FSM Supreme Court decisions in Bank of Hawaii v. Jack, 4 FSM Intrm. 216 (Pon.1990) (promissory notes involving banks are subject to national law), Mid-Pac Constr. v. Senda, 4 FSM Intrm. 376 (Pon.1990) (Congress has the power, under the commerce clause, to regulate incorporation and operations of corporations), and FSM Telecomm. Corp. v. Dept. of Treasury, 9 FSM Intrm. 380 (Pon. 2000) (Congress has power to establish FSM Telecom because telecommunications services "impact" interstate commerce). Your committee is of the opinion that the National Government power to regulate banking and interstate commerce reaches, not only transactions that cross state lines, but also those intrastate

transactions that must be included in the regulations in order to make those regulations effective. In this regard, your committee notes that the courts of the United States, interpreting language in the U.S. Constitution that is virtually identical to that in our Constitution, have repeatedly held that the power of Congress to regulate interstate commerce extends to intrastate transactions that are closely related to or have an effect on interstate commerce. See, e.g., NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) (Congress may regulate intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential to protect that commerce from burdens and obstruction"); and U.S. v. Wrightwood Dairy Co. 315 U.S. 110 (1942) (Congress has power to regulate interstate commerce and to regulate intrastate transactions to the extent "needed to make that regulation effective").

It cannot be disputed that the FSM Congress has the power to regulate secured financing by banks and secured transactions in interstate or foreign commerce. In the opinion of your committee the national secured transactions law must also reach intrastate loans in order to be effective. C.B. No. 14-57 is intended to facilitate commercial lending by giving lenders the certainty and protection of a single set of rules and priorities. That cannot occur if, with respect to any item of collateral, creditors might be subject to different priorities under state law than in the national system. It must be recognized that any single piece of collateral could potentially become subject to multiple security interests---one or more arising from interstate or bank transactions, and one or more from intrastate transactions. A national law regulating secured financing by banks or in interstate commerce would be undermined if the rights granted by the national law were compromised by a state law giving conflicting rights to an intrastate lender. Certainly, the willingness of lenders to provide secured financing would be greatly reduced if they could be prevented from exercising their rights under the national law by litigation in state courts arising from an incompatible set of creditor rights.

Your committee does not believe that an environment conducive to secured lending can be created by the passage of separate secured transactions laws in the four states. Certainly, serious problems would arise if the states were to adopt incompatible rules relating to

the perfection of security interests and the priorities among competing creditors. Separate state laws would also present serious questions as to which law applies when a transaction crosses state lines, the collateral has moved from one state to another, or the collateral is intangible and therefore has no physical location. C.B. No. 14-57 seeks to promote secured financing by, among other things, providing lenders with efficient mechanisms for enforcing their rights in collateral—i.e., by, as much as possible, enabling secured creditors to get the benefit of their collateral without having to experience the delays and uncertainties of litigation. Any attempt to regulate secured transactions through four separate state laws would, in contrast, undoubtedly increase the risk of litigation and thereby discourage secured lending.

Your committee also questions whether it would be feasible for the four states to establish and maintain separate registration systems. It is doubtful that, at least in the near term, there will be enough secured transactions in each of the states each year to justify the creation and maintenance of four parallel systems. It is important to consider that lenders will stop using any registration system that does not promptly and reliably process filings and provide accurate, up-to-date information. Any lender, before taking a security interest in collateral, would want to be aware of any other security interest previously perfected in any of the four states. Thus, to encourage secured lending, all four registration systems would need to be efficient, reliable and readily accessible, not only locally, but also from the other states as well. A failure of any state to implement and maintain such a registration system could spell the end of secured financing throughout the nation.

Your committee is strongly of the belief that there must be, among competing creditors, only one set of priorities, and that this can be established only through a national law that is uniformly applicable throughout the country. The only alternative is to have no consistent and predictable set of priorities. Security interests would then have little protective value for lenders and the result would surely be the end of secured financing.

By letter of September 1, 2005, the FSM Social Security Administrator expressed objections that C.B. No. 14-57, in certain circumstances,

would give priority to a secured party over the liens and claims of the Social Security Administration ("SSA"). Your committee has a number of observations regarding the Administrator's position. First, a secured lender would have priority only with respect to the collateral described in the financing agreement, leaving the SSA's rights unaffected with respect to other property of the debtor. Second, the bill clearly provides the SSA with the right to file its liens in the registry and thereby, in most instances, to gain priority over later-filed security interests. Third, C.B. No. 14-57 is entirely consistent with the priorities already established by the FSM Bankruptcy and Insolvency Act, title 31 of the FSM Code, which places secured interests in collateral ahead of unsecured SSA liens in bankruptcy. The Administrator's proposed changes would, in contrast, create an inconsistency between the two laws that could provide an unfortunate incentive for secured creditors to push debtors into bankruptcy. Most importantly, your committee believes that the purpose of C.B. No. 14-57 would be seriously undermined if the SSA were given a super-priority over secured creditors with respect to collateral. C.B. No. 14-57 is designed to encourage secured financing by providing certainty and protection to a secured lender's interest in its collateral. A lender who in good faith extends credit on the basis of a security interest in collateral and then files or otherwise perfects its security interest as provided by law should not face the risk that the SSA will later seize the collateral on the basis of an undisclosed lien or a claim that does not even exist at the time the secured loan is made. Your committee is informed that, although under current law the SSA has the right to a lien over all of the property of a business that is delinquent in making Social Security contributions, the SSA rarely if ever seeks to enforce its rights by forcing the sale of a debtor's assets. We believe that the nation will benefit more from creating an effective secured transactions law than from preserving the SSA's largely-theoretical right to override valid security interests.

At the public hearings, a number of participants raised questions about the security of a web-based registration system. Your committee is mindful that the registration system must be secure from intrusion by hackers and others who wish to do harm to the system. We are informed that web-based registration systems are functioning well in the United States and other countries and that the technology exists

for protecting the security of the databases. We have also been advised that funds should be available under the Private Sector Development Project to install and implement a state-of-the-art system. We encourage the Department of Economic Affairs to make sure that happens. Your committee also believes that there is no practical alternative to an electronic registration system. The system must be equally accessible from all four states and must handle filings efficiently and consistently. All data in the system must be quickly and reliably retrievable. No registry involving paper filings is likely to accomplish those objectives as well as a web-based system can. Furthermore, paper-based databases have themselves proven to be vulnerable to destruction and corruption, whether through intentional conduct or by human error, and, in the opinion of your committee, provide less security for users of the system.

Your committee supports C.B. No. 14-57 and believes that it is essential to the growth of the private sector in this country. We note, however, that the mere adoption of the law will not guarantee the availability of business financing. The banks will need to change the policies and practices that now result in their exporting most deposited money to other countries. Your committee is hopeful that no further governmental action will be necessary to ensure that FSM capital is invested at home, but we will need to continue to monitor the situation. The success of a new secured transactions law will also depend on the willingness of the courts to promptly provide, when requested, the relief that the law makes available. C.B. No. 14-57 establishes for creditors a right to an expedited order granting possession of collateral, after default by the borrower, in circumstances where the borrower is not cooperating by surrendering the collateral. This procedure, so long as the pertinent bill section is modified as discussed below, is appropriate to protect lenders against the risk that their collateral will disappear, be damaged or otherwise lose value. However, if the courts, by failing to provide the expedited relief promised by the bill, allow disputes over possession of collateral to languish, the protections afforded to secured loans will be significantly eroded and secured financing may never become an important source of business capital.

Although your committee is in support of C.B. No. 14-57, we do recommend a number of amendments. The amendments fall into the

following categories: (1) the addition of definitions for certain terms used in the bill, (2) the correction of certain erroneous cross-references to other parts of the bill, (3) the deletion or modification of certain provisions that the committee regards as unduly complicated or confusing, (4) the addition or modification of headings to make the bill more understandable, and (5) the substantial rewriting of the provision, discussed above, for expedited relief from the court. This last modification has been made, not only because your committee believes that the existing language is excessively complicated, but also because of our concern that the procedure, as originally drafted, may present due process problems. As modified the section would allow only for the entry of an expedited pre-judgment order, preserving the right of the parties to fully litigate any legitimate dispute. Specifically, we recommend the following changes:

1. Title, line 6, delete “1072” and insert “1071” in lieu thereof.
2. Delete page 3, line 24 through page 4, line 3, and renumber the following subsections accordingly.
3. Page 8, line 9, delete "or constructive".
4. Page 8, line 12, delete “in the ordinary course”.
5. Page 8, delete line 24, beginning with “the following”, through page 9, line 2, and insert the following in lieu thereof:
   “an automobile or truck, except that this term does not include a vehicle held as inventory of a debtor.”
6. Page 9, following line 9, insert the following and renumber the following subsections accordingly:
   “ (29) “Obligor” means a person that, with respect to an obligation secured by a security interest on the collateral, (a) owes payment or other performance of the obligation, (b) has provided property other than the collateral to secure payment or other performance of the obligation, or (c) is otherwise accountable, in whole or in part, for payment or performance of the obligation.”
7. Page 9, line 14, following “profit, a” insert “partnership or” and following “joint venture” and insert “a trust”.
8. Page 10, line 10, following “receiving” insert “a”.
9. Page 10, line 10, following “security” insert “interest”.
10. Page 11, following line 15, insert the following and renumber the following subsections accordingly:

"(38) "Security" shall be given the same meaning set forth in section 801 of title 33 of the Code of the Federated States of Micronesia."

11. Page 15, delete line 10, beginning with "as may", through line 11, and insert the following in lieu thereof:
"that a motor vehicle may be described generally or by serial number."
12. Page 15, line 21, delete "record" and insert "writing signed by the debtor and the secured party, provided that the agreement may be signed in counterparts" in lieu thereof.
13. Page 15, line 23, delete "records" and insert "writings" in lieu thereof.
14. Page 20, line 16, delete "authenticated" and insert "signed" in lieu thereof.
15. Page 21, line 8, immediately before "priority" insert "Perfection and".
16. Page 21, line 14, following "(1)", insert "Means of perfection."
17. Page 21, delete line 20, beginning with "possession", through line 21 and insert "perfection upon attachment of the security interest to collateral, without further action" in lieu thereof.
18. Page 21, delete line 22, beginning with "control", through line 23, ending with "party" and insert "possession of the collateral by the secured party" in lieu thereof.
19. Page 21, delete line 24, beginning with "perfection", through line 25 and insert "control of the collateral by the secured party" in lieu thereof.
20. Page 22, line 1, following "(2)", insert "Perfection by filing of notice."
21. Page 22, line 4, following "(3)", insert "Perfection by attachment."
22. Page 22, line 14, following "(4)", insert "Perfection by possession. (a)"
23. Page 22, following line 17, insert the following and re-letter the succeeding paragraphs accordingly:
"(b) A security interest in money may be perfected only by the secured party's taking possession of the money, except for cash proceeds."
24. Delete page 22, line 25, through page 23, line 2.
25. Page 23, line 3, delete "(6)" and insert "(5) Perfection by control of collateral." in lieu thereof.

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26. Page 23, line 5, delete "subpart (B)," and insert "section 1027 of this chapter in lieu thereof.
27. Page 23, delete lines 7 thorough 9.
28. Page 23, line 10, delete "(8)" and insert "(6) Bailment." in lieu thereof.
29. Page 23, line 18, delete "(9)" and insert "(7) Guarantees." in lieu thereof.
30. Page 23, line 23, delete "(10)" and insert "(8) Right to payment secured by real property mortgage." in lieu thereof.
31. Page 24, line 2, delete "(11)" and insert "(9) Property subject to a treaty." in lieu thereof.
32. Page 26, line 8, following "(1)" insert "Generally."
33. Page 26, line 16, following "(2)" insert "Buyer in the ordinary course of business."
34. Page 26, line 21, following "(3)" insert "Purchaser of consumer goods."
35. Page 27, line 2, following "(4)" insert "Purchaser of a motor vehicle".
36. Page 27, line 2, delete ", (2),".
37. Page 27, line 4, following "vehicle," insert "other than a buyer in the ordinary course of business,".
38. Page 27, line 12, following "(5)" insert "Purchaser of farm products".
39. Page 27, line 12, delete "subsections (1) and (2)" and insert "any other provision of this section," in lieu thereof.
40. Page 27, line 19, following "(1)", insert "Generally".
41. Page 27, line 25, following "(2)", insert "Lessee in the ordinary course of business".
42. Page 27, line 25, delete "subsection (1)" and insert "any other provision of this section" in lieu thereof.
43. Page 28, line 6, following "(3)", insert "Lessee of a motor vehicle."
44. Page 28, line 6, delete "subsection (1)" and insert "any other provision of this section" and following "lessee" insert ", other than a lessee in the ordinary course of business,".
45. Page 29, delete lines 15 through 25 and renumber both the following sections of the bill and the following proposed sections of the new Code chapter.

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46. Page 30, line 5, delete “equipment” and insert “goods. Subject to the provisions of section 1020 relating to security interests in inventory and livestock,” in lieu thereof.
47. Page 30, line 5, delete “perfected”.
48. Page 30, line 6, delete “equipment” and insert “goods, perfected by the filing of a notice,” in lieu thereof.
49. Page 30, line 11, delete “equipment” and insert “goods” in lieu thereof.
50. Page 41, line 13, following “notice”, insert “complying with the requirements of this chapter”.
51. Page 44, line 13, following “notice”, insert "as provided in section 1006 of this title.”
52. Page 44, lines 22 and 23, delete “an authenticated record” and insert “a signed writing” in lieu thereof.
53. Page 45, following line 23, insert the following and re-letter succeeding paragraphs accordingly:
“(b) the debtor is a natural person and not a citizen of the Federated States of Micronesia and the notice contains the name of the person as it appears on the person’s passport and identifies the country that issued the passport;”.
54. Page 49, lines 12-13, delete “an authenticated record” and insert “a signed writing” in lieu thereof.
55. Page 49, line 21, delete “in an authenticated record”.
56. Page 53, lines 1 and 2, delete “an authenticated record” and insert “a signed writing” in lieu thereof.
57. Page 54, line 2, delete “or”.
58. Page 54, line 7, delete the period and insert “; or” in lieu thereof.
59. Page 59, delete line 4, beginning with “judicial”, through line 6 and insert “General provisions” in lieu thereof.
60. Page 59, line 8, delete “part” and insert “subchapter” in lieu thereof.
61. Page 59, line 19, delete “8” and insert “1008” in lieu thereof.
62. Page 59, line 22, delete “part” and insert “subchapter” in lieu thereof.
63. Page 59, line 24, delete “part” and insert “subchapter” in lieu thereof.
64. Page 60, line 13, delete “part” and insert “subchapter” in lieu thereof.

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65. Page 60, line 24, delete "part" and insert "subchapter" in lieu thereof.
66. Page 61, line 2, delete "part" and insert "subchapter" in lieu thereof.
67. Page 62, line 1, following "actually" insert "or constructively".
68. Page 62, line 7, following "actually" insert "or constructively".
69. Page 62, line 13, after "enforcement" insert "of debt or obligation".
70. Page 62, lines 17-18, delete "person obligated on collateral" and insert "obligor" in lieu thereof.
71. Page 62, line 24, delete "person obligated on collateral" and insert "obligor" in lieu thereof.
72. Page 63, lines 1-2, delete "person obligated on collateral" and insert "obligor" in lieu thereof.
73. Page 63, lines 5-6, delete "person obligated on collateral" and insert "obligor" in lieu thereof.
74. Page 63, line 11, delete "1028" and insert "1027" in lieu thereof.
75. Page 63, line 16, delete "1028" and insert "1027" in lieu thereof.
76. Delete page 64, line 7, through page 69, line 4, and renumber both following sections of the bill and the following proposed sections of the new Code chapter accordingly.
77. Page 69, delete line 11, beginning with "If", through line 12, ending with "the" and insert "The" in lieu thereof.
78. Page 69, line 13, following "apply", insert "with respect to proceeds from enforcement of collection under section 1050".
79. Page 72, following line 3 insert a new section to read as follows and re-number both succeeding sections of the bill and proposed sections of the new Code chapter accordingly:

"Section 61. Title 33 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 1053 to read as follows:
"Section 1053. Judicial enforcement of right to possession--Pre-judgment orders.
(1) Upon default, a secured party, in connection with any judicial proceeding to enforce rights under section 1052 of this title, shall be entitled to an expedited hearing upon application for a pre-judgment order granting the secured party possession of the

collateral. Such application shall include a statement by the secured party, under oath, verifying the existence of the security agreement attached to the application and identifying at least one event of default by the debtor under the security agreement.

(2) The secured party shall serve a copy of the application upon the debtor, including a copy of all documents and evidence submitted to the court in support thereof. The court shall schedule the hearing under subsection (1) at the earliest available time, provided that no hearing shall be conducted without service on the debtor of the application and reasonable notice of the hearing unless (i)the court finds that the secured party has made reasonable efforts to make service on the debtor and that such efforts have not been successful; or (ii) the court finds that the hearing should be conducted without delay to prevent damage to the collateral, substantial loss of the collateral's value or the secured party's right to possession.

(3) If the court finds, after hearing, that it is probable that a default has occurred under the security agreement and that the secured party has a right to take possession of the collateral, the court shall enter a pre-judgment order granting the secured party possession of the collateral pending final judgment or further order of the court. The order may direct the debtor to take such action as the court deems necessary and appropriate so that the secured party may take possession.

(4) If the court enters an order under subsection (3) granting the secured party pre-judgment possession of the collateral, it shall also, upon application by the secured party, enter an order permitting the prejudgment sale or other disposition of the collateral under section 1054 of this title unless the collateral is rare or unique, or otherwise of such a nature that it is unlikely to be replaceable. In the event of a disposition under this subsection, the secured party shall retain possession of the proceeds of the disposition pending final judgment or further order of the court.

(5) A secured party who takes possession of collateral under an order issued pursuant to subsection (3) hereof shall hold such collateral subject to the rights and duties set forth in section 1008 of this title, pending disposition under subsection (4) hereof, final judgment or further order of the court.

(6) Nothing contained herein shall affect the right of a secured party to proceed under sections 1405 and 1406 of title 6 of this

Code at any time with respect to collateral or to bring any civil action for foreclosure in such manner as may be authorized under any other law."

80. Page 73, delete line 12, after "by", through line 13, ending with "evidencing" and insert "including in" in lieu thereof.
81. Page 73, line 13, delete "and including".
82. Page 73, line 16, delete "record" and insert "contract" in lieu thereof.
83. Page 74, line 4, delete "an authenticated" and insert "written" in lieu thereof.
84. Page 74, line 10, delete "1055 and insert "1054" in lieu thereof.
85. Page 74, line 11, delete "a".
86. Page 74, line 11, delete "authenticated".
87. Page 74, line 17, delete "an authenticated".
88. Page 75, line 21, delete "an authenticated".
89. Page 77, line 19, delete "1055" and insert "1054" in lieu thereof.
90. Page 79, line 2, delete "1055" and insert "1054" in lieu thereof.
91. Page 79, line 23, delete "is" and inset "in conformance with this subchapter shall be".
92. Delete page 79, line 24, beginning with "that would", through page 80, line 2, ending with "obligor" and insert "actually received from the disposition, except that" in lieu thereof.
93. Page 80 line 10, following "brought" insert ", the following:
", the surplus or deficiency shall be calculated based upon the proceeds that would have been received through a disposition to a transferee other than the secured party, a person related to the secured party or a secondary obligor".
94. Page 80, line 14, delete "a" and insert "another" in lieu thereof.
95. Page 80, line 14, delete "other".
96. Page 80, delete line 15, beginning with "that is", through line 16, ending with "made".
97. Page 83, line 2, delete "record authenticated" and insert "writing signed" in lieu thereof.
98. Delete page 84, line 12, through page 87, line 12, and insert the following in lieu thereof:
"(1) After default, a secured party may propose to accept collateral in full or partial satisfaction of the obligation secured, provided that the secured party shall dispose of the collateral under section 1054 if more than sixty percent of the debt secured by the collateral has been paid at the time of default. Notice of the

proposal to accept the collateral shall be provided to the debtor and each person described in section 1063 of this subchapter. The notice shall set forth the terms of the proposal, advise the recipient of the right to object as set forth in subsection (2) hereof, and designate an address where notice of objection may be provided during regular business hours.

(2) If any person entitled to notice of the proposal under subsection (1) hereof provides to the secured party notice of objection to the proposal within twenty days after being given notice under subsection (1), the security party shall dispose of the collateral under section 1054 of this title.

(3) If the secured party receives no notice within the period provided in subsection (2), the secured party shall be deemed, at the end of such period, to have accepted the collateral according to the terms of the proposal. (4) Any party with an interest in the collateral may agree in writing to a proposal for a secured party's acceptance of the collateral and such agreement shall be deemed a waiver of the rights to notice and to object provided in subsections (1) and (2) except as may be expressly stated in the agreement."

99. Page 87, delete line 22, beginning with "the debtor" through line 23, ending with "authenticated" and insert "notice of the proposal under section 1062(1) has been given to the debtor, written" in lieu thereof.
100. Page 88, delete line 1, beginning with "the debtor", through line 2, ending with "acceptance" and insert "notice of the proposal under section 1062(1) has been given to the debtor," in lieu thereof.
101. Page 88, line 9, delete "the debtor consented to the acceptance" and insert "notice of the proposal under section 1062(1) has been given to the debtor" in lieu thereof.
102. Page 88, line 25, delete "consented to by the debtor" and insert "specified in the proposal" in lieu thereof.
103. Page 90, line 11, delete "1056" and insert "1055" in lieu thereof.
104. Page 90, line 12, delete "authenticated" and insert "executed" in lieu thereof.
105. Page 90, line 14, delete "1064" and insert "1062" in lieu thereof.
106. Page 90, line 15, delete "(5)" and insert "(1)" in lieu thereof.
107. Page 90, line 16, delete "authenticated" and insert "executed" in lieu thereof.
108. Page 90, line 18, delete "1066" and insert "1065" in lieu thereof.
109. Page 90, line 20, delete "authenticated" and insert "executed" in

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lieu thereof.
110. Page 91, line 13, delete "1069" and insert "1068" in lieu thereof.
111. Page 91, line 15, delete "1069" and insert "1068" in lieu thereof.
112. Page 93, line 17, delete "1059" and insert "1058" in lieu thereof.
113. Page 95, line 2, following "proceeding" insert "or".
114. Page 95, delete lines 3 and 4 and re-letter the following paragraph accordingly.

With these amendments, your Committee on Ways and Means is in accord with the intent and purpose of C.B. No. 14-57 and recommends its passage on First Reading, and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. No. 14-57, C.D.1.

Respectfully submitted,

Isaac V. Figir, chairman

Roosevelt D. Kansou, vice chairman

Claude H. Phillip, member

Manny Mori, member

Peter M. Christian, member

Dohsis Halbert, member

Simiram Sipenuk, member